

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

UNITED STATES OF AMERICA,	:	
	:	
v.	:	
	:	CASE NO.: 1:12-cr-10 (WLS)
MELODY MILTON,	:	
	:	
Defendant.	:	
	:	

ORDER

Defendant Melody Milton moves for a sentence reduction because of an alleged breach of her plea agreement. (Doc. 41.) In particular, Milton claims she provided substantial assistance to law enforcement, but the Government refused in bad faith to file a motion for a downward departure under Section 5K1.1 of the United States Sentencing Guidelines. Milton's motion lacks merit.

The decision to file a Rule 35(b) motion is discretionary. *Wade v. United States*, 504 U.S. 181, 185 (1992). A district court cannot review the Government's refusal to file such a motion unless (1) the Government reneged on a promise to do so or (2) the Government's refusal is based on an unconstitutional motivation, such as the defendant's race or religion. *See United States v. Bell*, 465 F. App'x 892, 894 (11th Cir. 2012).

Milton alleges the Government broke its promise, but nothing in the plea agreement required the Government to file a motion for downward departure. To the contrary, Milton's plea agreement provided only that the Government would "consider" whether Milton provided substantial assistance and left that determination "solely with the Government." "Where . . . a plea agreement states that the government will 'consider' whether to the defendant's cooperation qualifies as substantial assistance and that this determination is in the government's sole discretion, the government does not breach the agreement by failing to file a substantial assistance motion." *Bell*, 465 F. App'x at 894; *United States v. Forney*, 9 F.3d 1492, 1499-1500 (11th Cir. 1993) (holding

that the Government did not breach the plea agreement by failing to file 5K1.1 motion where the agreement provided that the Government would “consider” filing motion and left the determination “solely” with the Government).

Milton admits she discussed a 5K1.1 motion with the Government but that the Government declined to file a motion on the ground that it already possessed the information she reported. Having exercised its lawful discretion, the Government did not breach the plea agreement. Milton’s motion (Doc. 41) is therefore **DENIED**.

SO ORDERED, this ____ 8th ____ day of July, 2014.

/s/ W. Louis Sands
W. LOUIS SANDS, JUDGE
UNITED STATES DISTRICT COURT